

APPENDIX B

(NOTE: The purpose of this Vendors' Guide to CSB Procurement Regulations is to instruct current and potential vendors and other providers on how they may market their goods and services to the CSB and provide them with the rules and regulations pertaining thereto. Portions of this Guide that are written in italics should be deleted prior to publishing as a guide for vendors. This Guide may also be used as the basis for a CSB's written procurement policies and procedures. It is suggested that this Guide be revised to include those procurement regulations and procedures that are peculiar to your CSB and made available to current and potential vendors and other providers. It should be referenced in your written procurement solicitations and, if possible, posted on your CSB web site. If it is used as your internal policies and procedures, it must be approved by the CSB Board.)

VENDORS' GUIDE TO CSB PROCUREMENT REGULATIONS

Community Services Board

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CHAPTER 1

Authority and Responsibility

1.1 Introduction

The purpose of this manual is to provide vendors (suppliers and providers) with information on:

- The general rules and regulations governing procurements made by the _____ Community Services Board.
- How to sell goods and services to this Community Services Board.
- Methods of resolving disputes regarding procurements.

1.2 Authority

The _____ Community Services Board (CSB) is a political subdivision of the Commonwealth of Virginia under the provisions of Sections 198 and 199 of Title 37.1 of the Code of Virginia.

Procurements by this CSB are conducted in accordance with the provisions of:

- The Virginia Public Procurement Act as contained in Sections 2.2-4300 through 2.2-4377 of the Code of Virginia (except those sections or portions of sections that apply only to State agencies).
- The purchasing procedures contained in this Vendor's Guide.

1.3 Responsibility

The responsibility for purchasing goods and services for this CSB is vested in the position of the Executive Director. This responsibility is delegated as follows:

NOTE: The following are examples. Actual delegation should be determined by the Executive Director and/or the Board.

- ***Purchases of goods and services not exceeding \$100 may be made by program directors or their designees.***
- ***Purchases of goods and services of \$100 but not exceeding \$15,000 must be approved in writing by the Purchasing Specialist or the Executive Director.***
- ***Purchases of goods and services amounting to \$15,000 or more must be approved in writing by the Executive Director or the Chairperson of the Board.***

CHAPTER 2

Procurement Methods

2.1 Policy

In the solicitation and award of contracts, the CSB will not discriminate because of race, religion, color, sex, or national origin of the bidder or offeror. (Code of Virginia, Section 2.2-4310A)

2.2 Exceptions to Competitive Procurements

Competition is not required, by the Virginia Public Procurement Act, for the following procurements:

Small Purchases	Small purchases are low dollar purchases where obtaining competition is considered impractical. This CSB has defined small purchase as goods and services not exceeding \$_____ in value. <i>NOTE: This amount should be approved by the Board and may be lower but it is recommended that it not exceed \$2,000 (or \$5,000 is the procurement process is handled by a certified purchasing agent.).</i>
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Emergency	Emergency purchases are defined as those procurements that are
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Purchases necessary to correct occurrences of a serious and urgent nature that demand immediate attention. These situations often endanger life or property.

Sole Source Sole source procurements are those in which the goods or service is not practicably available from any other source.

Used Equipment Used equipment is identified as equipment that has been previously owned and used. It is offered "as is" and amounts to less than \$50,000. If the cost is \$50,000 or more, the requirements must either be competitively procured or determined to be sole source. Demonstration or factory rebuilt or remanufactured equipment is not considered used since it must meet a specified standard.

Term Contracts Goods or services available from an existing term contract such as State or Local Government or CSB contracts. Since these contracts were established through a competitive process, they can be used without the necessity for further competition. The CSB may also participate in cooperative procurements with other CSBs or governmental entities.

Other governmental entities Goods or services procured from other state agencies and political subdivisions. These purchases may include:

- Surplus property.
- Products and services produced by the Virginia Department of Corrections and the Virginia Department for the Visually Handicapped.
- Products sold through the Virginia Distribution Center.
- Products and services sold by other state and counties.

Sheltered Workshops Goods or services may be purchased from sheltered or supported employment workshops.

Real Estate The purchase or rental of real property is not covered under the Virginia Public Procurement Act. The CSB will make every effort to

procure real property in a competitive manner; however, there may often be only one piece of property available that meets the CSB's requirements in the areas of location, space and accessibility.

Other Acquisitions

Competitive methods are not required for the procurement of:

- Equipment and supplies amounting to less than \$50,000 for testing or evaluation.
- Services of the following providers where the total amount of expenditures per year is less than \$50,000:
 - Academic/research consultants.
 - Honoraria and entertainment.
 - Royalties and film rentals when only available from the producer or protected distributors.
 - Membership dues.
 - Writers.
 - Artists and photographers.
- Equipment, supplies or services that are offered on a no cost basis to the CSB. The CSB has the right, however, to either accept or reject such donations.

2.3 Preferences

Preferences are allowed by the Virginia Public Procurement Act only in procurements involving:

- Tie bids in which the one of the tied bids is from a Virginia vendor or is for Virginia-produced goods while the other bid(s) is from out-of-state. The award will be made to the Virginia vendor or to the Virginia-produced product. Otherwise, the tie will be broken by drawing or a flip of the coin.
- The low bidder is from a state with an in-state preference. In this case, the amount of that state's preference may be subtracted from the next highest Virginia vendor's price. If the Virginia

vendor's price is then lower than the out-of-state vendor's price, the award may be made to the Virginia vendor.

EXAMPLE: If out-of-state Bidder "A" (from a state having an in-state preference of 4%) bid \$1.00 each and a Virginia bidder bid \$1.03 on an equal product, the award could be made to the Virginia bidder because his/her price of \$1.03 is within 4% of Bidder A's price.

- Recycled Content. If a tie bid is not decided by one of the above two circumstances, the award shall be made to the bidder whose goods contain the greatest amount of recycled content.

2.4 Specifications or Scopes of Work

The Virginia Public Procurement Act requires specifications, scopes of work or statements of need to be expressed in a manner that is:

- Sufficiently complete and specific to ensure users needs are adequately met,
- Broad enough to ensure competition and
- "Reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor." (Section 2.2-4300 of the Code of Virginia)

The following types of specifications may be used to describe the needs of this CSB:

Generic Specification

Generic specifications describe requirements without reference to a brand name or model number. Generic specifications include:

- Performance-type specifications which describe what the product or service must do rather than how the product or service must be designed.
- Life Cycle Costing (LCC) is a variation of a performance-type specification. A contract award, based upon LCC, takes into account all known cost factors associated with the procurement, installation, maintenance and ultimate disposal of the item pur-

chased.

- Design-type specifications describe how the product or service is to be designed and usually:
 - Includes those requirements that are necessary to provide the level of quality and performance needed by the user.
 - Is brand neutral.
 - Does not include any requirements which are unnecessary and might restrict other acceptable brands from competition.
- Qualified Products Lists (QPL) are used when the time necessary to evaluate competing brands is too lengthy to be conducted during the procurement process. The award of a solicitation which includes a QPL will be made only to a bidder or offeror quoting on a product listed on the QPL. Bidders or offerors wishing to offer another product on future solicitations must apply to the CSB to have that product evaluated.
- Qualified Contractors List (QCL) are used when it is necessary to pre-qualify contractors to perform a particular service prior to issuing a solicitation. The award of a solicitation which includes a QCL will be made only to a bidder or offeror listed on the QCL. Bidders or offerors wishing to participate in future solicitations must apply to be CSB to be evaluated.

**Brand Name or
Equal**

Unless otherwise stated in the solicitation, "the name of a certain brand make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named". Rather, the use of a brand name "conveys the general style, type, character, and quality of the article desired. Any article that the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted". (Section 2.2-4315 of the Code of Virginia)

Proprietary

A proprietary specification restricts the acceptable product to that of one manufacturer or a particular brand or model. Competition may be available from several distributors of the specified product; however, only one brand may be acceptable due to reasons such

as:

- The required product is to be a component of a system already in use, or
- The use of another brand would require considerable reorientation and training.

EXAMPLE: A sheltered workshop may have eight sewing machines of the same brand and model. The purchase of an additional sewing machine of a different brand with different features and controls may not be practical for this environment where extensive training is necessary in order for a worker to become proficient on a particular machine.

2.5 Competitive Procurement Procedures

Procurements that are not exempt from competition (see section 2.2) will be handled as follows:

Small Purchases Small purchases are defined by the Virginia Public Procurement Act as those under \$50,000. Based upon the estimated value of the procurement, this CSB will utilize the following procedures:

NOTE: The dollar amounts shown below are examples. Each CSB may wish to establish their own procedures for purchases of less than \$50,000.

- Up to \$2,000 - Verbal (telephone) or written quotations may be used. Competition may be obtained but is not required. Competition may not be required for purchases valued at up to \$5,000 if the procurement is made by a certified purchasing agent.
- \$2,000 (\$5,000 for a certified purchasing agent) to \$14,999 - Verbal (telephone) or written quotations will be solicited from at least three (3) potential suppliers or providers. A record will be kept of each quotation, indicating the name of the individual giving the quotation, the date, the price and the product or service offered.
- \$15,000 to \$49,999 - Unsealed written bids or proposals will be solicited from at least four (4) potential sources. When written bids

or proposals are solicited:

- The solicitation (invitation for bids or request for proposals) will contain:
 - The specifications or scope of work (needs).
 - The date, time and place the bids or proposals are due.
 - The terms and conditions applicable to the solicitation.
- Bids or proposals may be delivered in person, mailed, or sent via telefax; however, they must reach the office and/or person designated in the solicitation by the date and time indicated.
- Clarifications may be obtained by telephone; however, no change is made in the solicitation except by a written addendum.
- Bids or proposals are not opened publicly.

Sealed or Formal Bids

Invitations for Bids (IFB) are issued to request sealed or formal bids. Sealed or formal bids are primarily used for procurements of goods or services where the estimated value is \$50,000 or more. The sealed or formal bid procedures include:

- Public posting for at least ten (10) days.
- Written sealed bids submitted by bidders.
- Public bid opening where bidders' names, prices, discount terms and brand names and model numbers are read aloud.
- Bid evaluation based upon the requirements as set forth in the IFB.
- Award made to the lowest responsive and responsible bidder(s).
- Late bids will be returned unopened.

Two-step Sealed Bidding

The two-step bid procedure is used where there are inadequate specifications or where the CSB wishes to obtain the latest technology or to take advantage of vendor innovation.

Step One: Solicitations are issued to request an unpriced technical proposal. The technical proposals are evaluated in accordance with the evaluation criteria indicated in the IFB.

Step Two: Invitations for Bids (IFB) are issued to those bidders who responded to Step One and whose technical proposals were determined to be acceptable. Award is made to the lowest responsive and responsible bidder(s).

Combination of Steps One and Two: Both the technical proposal and the bid prices may be requested at the same time but in separate sealed envelopes. Only those price envelopes from bidders submitting acceptable technical proposals will be opened.

**Competitive
Negotiation
(RFP)**

Competitive Negotiation is used to procure goods or services upon determination in writing that competitive sealed bidding is:

- Not practicable or,
- Not fiscally advantageous to the CSB.

(Section 2.2-4303-C of the Code of Virginia)

EXAMPLE: Providers of the required service have different approaches to achieve the end result. Also, the CSB wishes to consider the varying levels of experience and expertise of the potential offerors; therefore, an award cannot be based upon the lowest responsive and responsible bidder.

The competitive negotiation procedures includes:

- Request for Proposals (RFP) issued by the CSB. Stated in the RFP will be:
 - The due date and time for the proposals.
 - The evaluation criteria.
 - Terms and conditions pertaining to the procurement.
 - Any special requirements.
- Public posting for at least ten (10) days.

- Publication in a newspaper of general circulation in the area in which the contract is to be performed.
- The selection of two or more of the best suited offerors, based upon the evaluation criteria.
- Question and answer clarification conference with one or more offerors may be scheduled if the CSB deems it advisable. This conference:
 - May be conducted either in person or via the telephone.
 - Is limited to a clarification or verification of the offeror's written proposal.
 - Will not include negotiations.
 - May require the offeror to document an answer if a written clarification is deemed, by the CSB, to be advisable.
- Negotiations conducted with the two or more best suited offerors unless only one offeror is determined by the CSB to be fully or most highly qualified.
- Award to the offeror which, in the CSB's opinion, has made the best proposal or is the most highly qualified.

**Professional
Services**

Definition - Professional services are defined, in Section 2.2-4301 of the Code of Virginia, as "work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering".

Procedure - The procedures for Competitive Negotiation are used in the procurement of professional services with the following exceptions:

- The RFP will not request estimates of man-hours or cost for services.
- Repetitive informal interviews may be conducted in which non-binding estimates of total project cost and methods utilized in arriving at that cost may be discussed.
- Offers will be ranked in order of preference.
- Negotiations are conducted beginning with the first-ranked offeror.

- If agreement cannot be reached with the first-ranked offeror, negotiations are formally terminated with that offeror and negotiations are conducted with the second-ranked and so on until an agreement is reached.

At any time during the negotiations, the CSB may terminate all negotiations and readvertise the requirement.

2.6 Procurement of Conference Facilities

The cost of renting conference facilities is comprised of:

- Rental of guest rooms.
- Rental of meeting rooms.
- Purchase of food.
- Rented items (such as audio-visual equipment, etc.)

The rental of guest rooms and meeting rooms is considered rental of real estate and may be purchased without competition. The purchase of food and the rental of equipment is considered a procurement and, if these costs are expected to exceed **\$5,000**, they will added to the anticipated cost of the rooms and the entire package will be purchased competitively. A formal Invitation for Bids will be issued if the total requirement, including room rental, equipment rental and purchase of food is anticipated to exceed \$50,000.

2.7 General Rules Pertaining to Bids and Contracts

The following rules are applicable to all solicitation (IFBs or RFPs) and contracts issued by this CSB.

Bid Evaluation	The CSB reserves the right to reject any and all bids in whole or in part and to waive any informality in the bid. In the case of errors in the extension of prices, the unit price will govern.
Multiple Awards	Unless otherwise specifically indicated in the solicitation, the CSB may award a multi-line program in whole, in part, or on an individual line item basis.

Assignment of Contract	A contract shall not be assignable by the vendor in whole or in part without the written consent of the CSB office issuing the contract.
Contract Renewal or Extension	A contract may contain a renewal clause describing the conditions under which a term contract may be renewed. A contract not containing a renewal clause may be extended by mutual consent for a limited period of time, not to exceed six (6) months. The CSB may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.
Negotiations with Bidders	Sealed bid (IFB) programs may be canceled or rejected by the CSB. If not canceled or rejected, a contract will be awarded to the lowest responsive and responsible bidder based upon the bid submitted except that if the bid exceeds available funds, the CSB may negotiate with the apparent low bidder to obtain a contract price within available funds.
Contract Modification	A contract may include provisions for renewal, extension, or modification; however, no additional consideration may be paid to the contractor because of renewal or extension unless specifically authorized under the original contract. A public contract may include provisions for modification of the contract during performance, but no <u>fixed price</u> contract may be increased by more than 25 percent of the original amount of the contract or \$50,000, whichever is greater, without the written approval of the Board.

CHAPTER 3

Responsibilities of Vendors and Providers

3.1 Application and Registration

Vendors or providers wishing to provide products or services to the CSB must submit a written request to the office of the Executive Director *(or his/her designee)* indicating the products or services being offered. The CSB may require additional information pertaining to the organization, financial condition and capabilities of the vendor or provider prior to the inclusion of that firm on the CSB vendor list.

In addition the CSB may:

- Require the submission of a vendor application form by the vendor or provider.
- Make on-site inspections to verify the capability of the vendor or provider prior to being placed on the list.
- Remove a vendor or provider from the mailing list for failure to respond to *two* consecutive solicitations.

NOTE: Approval of a vendor or provider to be placed on the CSB vendor mailing list does not constitute any commitment on the part of the CSB to include that vendor or provider on the mailing list for all solicitations for the goods or services offered. The CSB will attempt to provide all vendors and providers an opportunity to respond to solicitations on a rotational basis; however, the mailing list for each solicitation will, of necessity, include responsible vendors or providers who consistently offer responsive bids and proposals.

Prospective vendors and providers may check the solicitations posted on the procurement bulletin board to learn of IFBs or RFPs for which they may not have been on the mailing list. Copies of these solicitations will be provided upon request.

The CSB may elect, as an alternative to maintaining a vendor mailing list, to participate in the Commonwealth of Virginia's e-procurement program, known as eVA. If this option is used, the CSB may obtain some or all of its potential bidders and offerors

from the eVA vendor list. Vendors may register with eVA at: www.eVA.state.va.us.

3.2 Responsible Bidder or Offeror

In determining a responsible bidder or offeror, a number of factors including but not limited to the following are considered. The vendor should:

- Be a regular dealer, supplier or, when required in the solicitation, an authorized dealer of the goods or services offered.
- Have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments.
- Have a satisfactory record or performance.
- Have a satisfactory record of integrity.
- Have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the purchase order or contract.

3.3 Debarment

Debarment is action taken by the Board of the CSB to exclude individuals or firms from contracting with the CSB for particular goods or services for specified periods of time. (Section 2.2-4321 of the Code of Virginia). Debarment does not relieve the vendor or provider of responsibility for existing obligations.

Individuals or firms may be debarred for up to one (1) year for improper conduct including:

- Breach (including anticipatory breach) of a contract with the CSB.
- Stating an unwillingness or inability to honor a binding bid. (A mere request to withdraw a bid, which does not otherwise state an unwillingness or inability to perform, is not a cause for debarment.)

- Falsifying or misrepresenting manufacturer's specifications in order to appear responsive to a solicitation.
- Conferring or offering to confer any gift, gratuity, favor, or advantage, present or future, upon any employee of the CSB who exercises any "official responsibility" for a "procurement transaction" as those terms are defined in Section 2.2-4368 of the *Code of Virginia*. It is not necessary that the offer be accepted by the employee, or that the offer be made with intent to influence the employee in an official act. Extending to any CSB employee exercising official responsibility for a procurement transaction any discount or privilege not available to all CSB employees is considered to be offering an advantage.
- Any cause indicating that the individual or firm is not a responsible vendor.
- A determination by the Executive Director that a vendor has used abusive or obscene language or a threatening manner toward a CSB employee exercising official responsibility for a procurement transaction during the performance of their duties as a result of the performance of their duties.
- Sale, under non-emergency conditions, of building materials, supplies or equipment for any building or structure contracted by or for the CSB by a person or independent contractor employed to provide architectural, engineering or design services, but not construction for such building or structure or from any partnership, association or corporation in which the architect or engineer who has provided or is providing the services has a personal interest. *Code of Virginia, Section 2.2-4374*.
- Consent of the firm or individual being debarred.
- Failure to pay re-procurement cost pursuant to a contract termination for default.

Individual or firms may be debarred for up to three (3) years for any of the following reasons:

- Conviction of any criminal offense involving public contracting.
- Court judgment finding a violation of either federal or state antitrust laws.
- Conviction of any offenses indicating a lack of moral or business integrity.

NOTE: The CSB board or your locality (if you are a single jurisdictional CSB) may determine different policies related to debarment. Changes to the above section may be necessary.

Debarment does not relieve the contractor of responsibility for existing obligations.

3.4 Debarment Notification

An individual or firm being debarred from contracting with the CSB will be notified in writing. The notice shall state the reasons for the action taken and the length of the debarment. This decision shall be final unless that action is overturned upon an appeal.

3.5 Debarment Period

Debarment shall be for a period of one (1) year except that debarment for court judgment finding a violation of either federal or state antitrust laws or conviction of any offenses indicating a lack of moral or business integrity shall be for a period of three (3) years. Debarment shall commence upon notification of debarment, or if later, upon expiration of any existing debarments.

Notwithstanding the prescribed duration of the debarment, at the discretion of the CSB Executive Director, a debarment may be lifted or suspended at any time if it is in the best interest of the CSB. A debarred individual or firm can apply for reinstatement in writing at any time to the debarring official. This request should:

- Cite actions taken to remedy the reason for debarment or,
- Cite actions taken to prevent recurrence of the situation that caused the debarment action to be taken.
- Cite evidence indicating that lifting or suspension of the debarment would be in the best interests of the CSB.

Examples of actions that the Executive Director may take into consideration include, but are not limited to:

- Repayment by a debarred vendor of additional costs resulting from a default action for which the vendor had previously failed to reimburse the CSB and was debarred.
- Disassociation with individuals or firms that were responsible for the debarment.

3.6 Vendor Assistance to the CSB

Vendor sales efforts of a consultative or advisory nature are encouraged. These efforts provide information to keep the CSB up-to-date. The furnishing of product or service information by a vendor is considered to be normal sales effort and does not entitle the vendor to preferential treatment in the awarding of contracts.

3.7 Personal Interest and Gifts

No vendor shall offer any gift, gratuity, favor, or advantage to any CSB employee who exercises official procurement responsibility, develops procurement requirements, or otherwise influences procurement decisions. CSB employees may attend vendor-sponsored seminars or trade shows where the buying staffs will benefit from receiving product information and learning of new techniques and trends. Food, drinks, and give-away items offered to all participants at such functions may be accepted by CSB employees attending.

3.8 Copyright

No vendor may copyright any work contracted for by the CSB and produced for the CSB without the written consent of the CSB.

3.9 Ownership of Artwork, Negatives, etc. for Printing

All artwork, negatives, dies, overlays, or similar materials used to print a job shall be the property of the CSB and must be returned the CSB upon completion.

3.10 Overruns, Underruns for Printing Jobs

The CSB is not required to accept overruns unless so stated in the solicitation. The CSB may, at its discretion, accept up to a ten percent overrun. Prices for overruns shall not exceed the quoted base price per unit, or the quoted price for additional copies run at the same time. Whichever price is less will prevail. The CSB, at its discretion, accept an underrun, provided that credit is allowed the CSB at the full base price per unit for the quantity of the underrun.

CHAPTER 4

Solicitations - General Rules

4.1 Selection of Bidders and Offerors

All qualified vendors have access to CSB business unless they have been officially suspended or disbarred. (See Sections 3.3 and 5.11) It may not be practical, due to a large number of qualified vendors, for the CSB to mail solicitations to every known vendor for a particular goods or service; however all solicitations with an estimated value of \$15,000 or more will be posted on the CSB Procurement Bulletin Board and any vendor may request a copy.

On occasion, a competitive procurement may be restricted to:

- Manufacturers.

- Vendors whose products or services have been pre-approved and are listed on a Qualified Products List (QPL) or a Qualified Contractors' List (QCL).
- Vendors who possess certain licenses or other qualifications.

When vendor restrictions are applicable to a solicitation, the restriction(s) will be so stated in the IFB or RFP.

The CSB also reserves the right to purchase through the Commonwealth of Virginia's electronic procurement program, known as eVA.

4.2 Response Time

Normally, the time set for return of sealed bids or proposals is fourteen to seventeen days after publication of the IFB or RFP. The minimum time will not be less than ten calendar days and, if time is not critical, as much as thirty calendar days may be allowed.

4.3 Pre-Bid or Pre-Proposal Conference

Pre-Bid or Pre-Proposal conferences may be scheduled for certain solicitations, especially when the product or service being purchased is complex or contains critical elements. The date, time and place of the conference will be noted in the solicitation. Attendance at some conferences may be mandatory and, if so, this fact will also be noted in the solicitation. When attendance is mandatory, only bids or proposals submitted by vendors who were represented at the conference will be considered.

4.4 Receipt of Bids or Proposals

The solicitation will state where the bids or proposals are to be delivered and the due date and time. Bids or proposals not received in the designated place by the due date and time are automatically disqualified and will not be considered. The official time used in the receipt of responses is that time on the clock or automatic time stamp machine in the office that receives the bids or proposals.

The outside of the envelope containing a sealed bid or proposal must be marked with the name, number and due date of the solicitation. Sealed bids or proposals not marked may be inadvertently opened and the information compromised which may cause the bid or offer to be disqualified.

Vendors should not combine two or more responses to separate IFBs or RFPs into one envelope since they may have different due dates.

4.5 Canceling or Amending a Solicitation

The CSB may cancel or withdraw a solicitation in whole or in part and reject any and all bid or proposals at any time prior to an award.

Amendments may be made by the issuance of an addendum prior to the time set for receipt of response.

4.6 Facsimile Bids or Proposals

Facsimile responses will be accepted for unsealed (or informal) solicitations.

Facsimile responses will not be accepted for sealed or formal solicitations.

4.7 Signature on Bid or Proposal

Proposals, bids, and all addenda returned by the vendor must be signed in ink as instructed in the solicitation documents. The person signing the bid or proposal must be a person authorized by the vendor to sign bids or proposals. Facsimile or typewritten signatures are not acceptable responses to a formal IFB or RFP in which sealed responses are required. The person signing must include his or her title, and if requested, must verify his or her authority to bind his or her company in contract. **Failure to sign the face of the bid or proposal in the space provided will result in**

rejection of the bid or proposal unless the unsigned bid or proposal is accompanied by other signed documents indicating the bidder's or offeror's intent to be bound.

4.8 Bonds

Bid bonds, a performance and a payment bond may be required in a solicitation. When a bid bond is required, the amount required will not exceed 5% of the amount of the bid. A bid bond, when specified, must accompany the bid. (Section 2.2-4336 of the *Code of Virginia*) Performance bonds and payment bonds, if requested, must be in an amount at least equal to 100% of the accepted bid or proposal unless otherwise specified. (Section 2.2-4337 of the *Code of Virginia*)

The CSB (upon approval of its legal advisor) may accept, in lieu of a bid, payment or performance bond:

- Certified check.
- Cash escrow.
- Personal bond.
- Property bond.
- Bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond.
(Section 2.2-4338 of the *Code of Virginia*)

4.9 Specifications - Questions and Comments

The CSB intends to use specifications that encourage competition. Vendors are encouraged to inform the responsible purchasing office in writing whenever they have comments or questions concerning specifications or solicitation requirements. Suggestions concerning new products or services are also encouraged. This information should be provided to the responsible purchasing office as early as possible in order to provide time to consider the suggestion and take any necessary action before the scheduled receipt date.

4.10 Contractor Registration (License)

All vendors bidding on construction, demolition, repair, or improvements to facilities which are estimated to be \$7,500

(1,000 for electrical, plumbing and HVAC work) or more, must be registered contractors with the Department of Professional and Occupational Registration, Virginia Board for Contractors, in accordance with Title 54, Chapter 7 of the Code of Virginia. In addition, all nonresident contractors and subcontractors submitting bids on the above work who are not registered with the Department of Commerce shall register with the Department of Labor and Industry under the provisions of Subsection 40.1-30 of the *Code of Virginia*.

4.11 Terms and Conditions

Solicitations contain general terms and conditions which incorporate the procedures and provisions of this manual as well as all statutory provisions. Special terms and conditions may change or rescind the procedures and provisions of this manual, and the solicitation should be read with care prior to submission of a bid or proposal. Modification of or additions to any portion of an IFB made by a bidder which affects quality, quantity, price or delivery may cause rejection of the bid as being nonresponsive. In the case of modifications or additions to IFBs which do not affect quality, quantity, price and delivery, the CSB may, in its sole discretion, on a case-by-case basis, reject them as nonresponsive, or waive them as informalities in appropriate situations or require the bidder to withdraw the nonresponsive language within a specified period of time as a condition to not being declared nonresponsive. Modifications or additions to any portion of an RFP, including but not limited to contractual terms and conditions and the requirements for that which is to be procured, are adequate grounds for rejecting the proposal unless undesired modifications or additions are amended or withdrawn to the satisfaction of the CSB during the course of any discussions and negotiations that may be held. No modification of or addition to any provisions of a solicitation shall be effective unless reduced to writing and signed by the parties to the contract.

4.12 Pricing and Discounts

Solicitations normally request net price FOB destination for the unit, item or service specified. Cash discounts offered for prompt payment must be clearly shown and will be taken if payment is made within the specified time frame, i.e., 2%-20 days. Cash

discounts will not be used as a factor in award unless the CSB so specifies in the solicitation.

4.13 Samples

Samples of items, when called for in a solicitation, must be furnished free of charge or expense. Samples submitted by the successful bidder or offeror may be held for comparison with merchandise furnished. All samples submitted may be subjected to tests and evaluation by either a qualified laboratory or test panel, and the results may be a factor in making the award. Samples not destroyed in testing will, if requested, be returned to the bidder or offeror at his or her own expense. Requests for the return of samples must be made within thirty (30) days following the due date for the solicitation. Requests for return of samples will be honored upon the completion of testing and evaluation. Samples not claimed within 60 days will be disposed of.

4.14 Alternate Bids

An alternate bid is a bid submitted in response to an IFB which is in knowing variance from the specifications. The CSB cannot accept an alternate bid, however, if it does not meet the requirements of the specifications or scope of work. If the CSB believes the alternate specification better meets its needs, it may reject all bids and rebid the requirement with a revised specification using the features of the alternate. Information on products or services with alternate specifications or scopes of work should be submitted to the CSB as early as possible in order for an evaluation to be made prior to issuing the solicitation.

4.15 Taxes

The CSB is exempt from Federal Excise Taxes and Virginia State Sales Tax. The State Sales Tax does not apply to most sales made to the CSB. Contractors doing business with the CSB are not exempt from sales tax on materials and supplies that are installed and become part of real property. The sales taxes paid by a contractor on such material or supplies are a cost of doing business and should be considered in pricing when preparing a solicitation response. (See Virginia Retail Sales and Use Tax Regulations, Sections 630-10-27 and 630-10-45 D and E.)

4.16 Amending or Withdrawing Bids or Proposals

The conditions under which bids or proposals may or may not be amended or withdrawn by a bidder or offeror are as follows:

Amend a bid or proposal prior to opening date and hour.

This action is permitted if a written request is received by the office which issued the solicitation.

Alter or amend a bid or proposal prior to opening date and hour

The person authorized to submit bids or proposals may request the return of the bid or proposal. He or she should then:

- Draw a single line through the information to be changed.
- Insert the desired information.
- Initial the change.
- Refrain from erasing or opaqueing information on bid or proposal.

OR

The person authorized to submit bids or proposals may submit a letter outlining the changes to be made in the bid or proposal.

Correct an informality discovered in a bid after the opening date and hour

An informality is a minor defect or variation of a bid or proposal that may be waived or corrected without prejudice to other bidders. It does not affect:

- Price,
- Quality,
- Quantity,
- Delivery schedule, or
- Contractual conditions.

The CSB may, in its sole discretion, waive such informalities or permit the bidder to correct them, whichever procedure is in the best interests of the

CSB. Examples of informalities that may be corrected in this manner are:

- Return of less than the number of signed bids required by the IFB.
- Failure to sign the face of the bid in the space provided, but only if the unsigned bid is accompanied by other signed documents indicating the bidder's intent to be bound.
- Failure to acknowledge receipt of an addendum to the IFB, but only if it is clear from the bid that the bidder received the addendum and intends to be bound by its terms, or the addendum involved had a negligible effect on price, quantity, quality, or delivery.

Errors of judgment in a bid.

Bids may not be withdrawn or corrected due to mistakes which are attributable to errors in judgment and the fact that an error was made is not obvious to the person with the procurement responsibility.

Non-Judgmental errors in a bid.

Errors in bids may be corrected or withdrawn if the following conditions are present:

- Mistakes are present but the intended quotation is evident to the person with the procurement responsibility. The CSB may correct the bid or allow the bidder to withdraw the bid.

EXAMPLES: Typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

- Mistakes that are evident to the person with the procurement responsibility; however, the intended quotation is not evident. The bid cannot be corrected; however, the CSB may permit the bidder to withdraw the bid.

EXAMPLES: A price that is significantly lower than the other bids received or a quote on an item that the bidder obviously does not supply.

Mistakes discovered in a bid or contract after award.

Mistakes may not be corrected or withdrawn after the award of a contract.

Construction bids.

A bidder for a construction contract may withdraw his or her bid from consideration if the:

- Price was substantially lower than other bids due solely to a mistake therein.
- Bid was submitted in good faith.
- Mistake was a clerical mistake as opposed to a judgmental mistake.
- Mistake was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.
- Bidder submits to the CSB or designated official his or her original work papers, document and materials used in the preparation of the bid within one day after the date fixed for submission of bids.
- Work papers are delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. The bids shall be opened one day following the time fixed by the public body for the submission of bids.
- Bidder shall claim in writing, within two hours after the opening of bids, any mistake as defined herein and withdraw his or her bid.

Construction Bids
(Continued)

The contract shall not be awarded by the public body until the two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein. (See Section 2.2-4330 of the *Code of Virginia*.)

4.17 Open Records

Procurement records are open to the inspection of any citizen or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act. The following exceptions apply:

- Cost estimates relating to a proposed procurement transaction prepared by or for the CSB are not open to public inspection (Section 2.2-4342-B, *Code of Virginia*).
- Bid and proposal records are not available to the public for inspection until after the award except that any bidder or offeror, upon request, shall be afforded the opportunity to inspect bid or proposal records within a reasonable time after the opening, evaluation, and negotiation (if applicable) of the bids or proposals but prior to award, except in the event that the CSB decides not to accept any of the bids or proposals and to resolicit. (Section 2.2-4342-C & D of the *Code of Virginia*.)
- Any inspection of records shall be subject to reasonable restrictions to ensure the security and integrity of the records (Section 2.2-4342-E of the *Code of Virginia*).
- The CSB may make reasonable charges for the copying, search time and computer time expended in the supplying information requested under the Virginia Freedom of Information Act. The charge shall not exceed the actual cost of supplying such records. Upon request, the CSB will furnish in advance an estimate of the charges for supplying procurement records.
- Trade secrets or proprietary information submitted by a bidder or offeror in connection with a procurement transaction or

prequalification application submitted pursuant to Subsection B of 2.2-4317 of the *Code of Virginia*, are not subject to public disclosure under the *Virginia Freedom of Information Act*; however, the bidder or offeror must invoke the protection of Section 2.2-3700 of the *Code of Virginia* "prior to or upon submission of the data or other materials", and must identify the data or other materials to be protected and state the reasons why protection is necessary.

4.18 Prohibited Purchases

Section 2.2-4374 of the *Code of Virginia* prohibits the procurement of building materials to be used in the construction of a building or structure from the architect or engineer (or a sub-contractor thereof) who designed the building unless that architect or engineer has a design-build contract with the public body (CSB).

CHAPTER 5

Vendor Performance

5.1 Purchase Order or Contract Document, Authority and Shipment

The execution of a contract may take several different forms:

- A verbal contract or order may be issued by the CSB for items or services that do not exceed \$500 in value. The only form required in this instance would be the invoice submitted by the contractor after completion of the contract.
- A purchase order form may be used by the CSB to execute a purchase transaction or establish a contract. A purchase order may also be used to order out goods or services contracted for under the terms of a single signature or two-party contract form.

- A single signature contract form may also be used to establish a contract. This document will refer to the contractor's bid, proposal, memorandum of understanding, and/or best and final offer. The contractor's signature on these documents and the authorized CSB official's signature on the contract document will constitute mutual acceptance of the contract provisions. This contract document may authorize immediate shipment of product or the beginning of the performance of services or it may merely establish the period of the contract. In this instance, a purchase order may be used to authorize action by the contractor.
- A two-party contract form, signed by the contractor and the authorized CSB official may be used to establish a contract. This document will contain, either by inclusion or by reference, all of the provisions of the contract. As with the single signature contract form, this document may either authorize immediate provision of service or shipment of goods or it may provide for the issuance of a purchase order to authorize action by the contractor.

5.2 New/Used/Altered

All supplies and equipment furnished to the CSB must be new and in first class condition unless the contract specifies used or refurbished items. Demonstration, previously rented, or reconditioned items are not considered new. No equipment is acceptable if serial numbers or any other manufacturers' identifying labels or marks have been removed, obliterated, or changed.

5.3 Packaging

Shipping containers shall be legibly marked or labeled on the outside with the commodity description and number, size and quantity. A packing slip or invoice must accompany all shipments and must reference the purchase order number.

5.4 Substitutions

Substitution is defined as delivery of any item or provision of a service that does not conform to the specifications or scope of work of the

purchase order or contract. Substitutions on purchase orders or contracts require the approval of the CSB official who signed the purchase order or contract. Any items or services that do not meet specifications may be rejected or returned to the contractor at the contractor's expense. When a shipment, item or service is returned or rejected, the contractor must make immediate replacement with acceptable merchandise or service or be considered in default.

5.5 Loss or Damage in Transit

Delivery by a vendor to a common carrier does not constitute delivery to the CSB. Any claim for loss or damage incurred during delivery shall be between the vendor and the carrier. The CSB accepts title only when goods are received regardless of the FOB point. The CSB will note all apparent damages in transit on the freight bill and notify the vendor. Discovery of concealed damage or loss will be reported by the CSB to the carrier and the vendor within seven days of receipt and prior to removal from the point of delivery. The vendor shall make immediate replacement of the damaged or lost merchandise or be in default of the contract. It shall be the vendor's responsibility to file a claim against the carrier. If damage is to a small quantity, the vendor may, with the approval of the CSB, deduct the amount of damage or loss from his or her invoice to the CSB in lieu of replacement.

5.6 Freight

By signing a bid or proposal, bidders or offerors certify that the prices offered for FOB destination include only the actual freight rate costs at the lowest and best rate and are based upon the actual weight of the goods shipped. Freight charges are, therefore, established for each individual purchase. If a requirement is offered FOB origin, the vendor shall prepay the charges and add the amount to the invoice. A copy of the freight bill should be attached to all invoices that include freight charges. In a solicitation specifying FOB origin, the CSB will consider freight cost in the evaluation of bids and proposals.

5.7 Delivery Time

Delivery or performance of goods or service must be made by the date or period specified in the purchase order or contract or the vendor will be considered to be in default. If a vendor cannot make delivery or perform a service as specified under any existing purchase order or contract, the vendor must immediately notify the CSB. The vendor may offer a new

delivery date; however, if it is not acceptable to the CSB and delivery cannot be made as originally specified, the vendor will be considered in default

5.8 Receipt of Goods

Shipments will be checked against a copy of the purchase order or contract. Quantities, units, etc., must match the purchase order or contract. Overshipments may be rejected and returned at the vendor's expense. Vendors should ensure that they have been given a specific delivery location and receive a signed receipt for goods delivered.

5.9 Inspection

All materials, equipment , supplies, and services are subject to inspection and testing. Failure to reject upon receipt, however, does not relieve the vendor for liability for latent or hidden defects subsequently revealed when goods are put to use or tested. If latent defects are found, the vendor is responsible for replacing the defective goods and is liable for any resulting expenses incurred by the CSB.

5.10 Failure to Deliver

Vendors unable to deliver goods or services when specified must notify the CSB. The vendor may offer a new delivery date; however, if it is not acceptable to the CSB and delivery cannot be made as originally specified, the vendor will be considered in default.

5.11 Termination for Default

In case of default by the vendor for failure to deliver or perform in accordance with specifications or scope of work, the CSB may procure the articles or services from other sources and hold the defaulting vendor responsible for any excess cost incurred. The CSB will normally repurchase from the next low bidder or the next highest rated offeror or purchase competitively by resolicitation; however, if this is not practical because of restraints of time or availability, the CSB may procure the goods or service from a vendor based solely on that vendor's capacity to deliver the required goods or services in the time frame required. If the

repurchase results in increased cost to the CSB, a letter will be sent to the defaulted contractor requiring payment for additional costs. When repayment is requested, the Contractor will be suspended from the mailing list for purchase solicitations for a specified period of time or until the repayment has occurred, whichever occurs first. The vendor shall not be liable for any excess cost if the failure to perform arises out of any act of war, order of legal authority, strikes, act of God, or other unavoidable causes not attributed to the fault of negligence of the vendor. The burden of proof rests with the vendor.

5.12 Termination for Convenience of the CSB

A purchase order or contract may be terminated for the convenience of the CSB by delivering to the contractor a notice of termination specifying the extent to which performance under the purchase order or contract is terminated, and the date of termination. After receipt of a notice of termination, the contractor must stop all work or deliveries under the purchase order or contract on the date and to the extent specified.

If the purchase order or contract is for commercial items sold in substantial quantities to the general public and no specific identifiable inventories were maintained exclusively for the CSB's use, no claims will be accepted by the CSB. Payment will be made for items shipped prior to receipt of the termination notice, unless otherwise specified in the contract.

If the purchase order or contract is for items being produced exclusively for the use of the CSB, and raw materials or services must be secured by the contractor from other sources, the contractor shall order no additional materials or services except as may be necessary for completion of any portion of the work which was not terminated. The CSB may direct the delivery of fabricated or non-fabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work, or direct the contractor to sell the same, subject to the CSB's approval as to price. The contractor may, with the approval of the CSB, retain the same, and apply a credit to the claim. The contractor must complete performance on any part of the purchase order or contract not terminated.

The contractor must submit any termination claim within 120 days after receipt of the notice of termination, or such longer period as the CSB for good cause may allow. This claim will be in a form and with certifications prescribed by the purchasing office that issued the

purchase order. The claim will be reviewed and resolved in accordance with Section 5.14 of this Manual.

5.13 Cancellation of Purchase Order and Contracts

No cancellation of purchase orders or contracts may be made except in writing by the office that issued the purchase order or contract. Orders or contracts may be canceled without the consent of the vendor in cases of default. A vendor may request cancellation, and the CSB will grant relief if the vendor is prevented from specific performance, including timely delivery, by an act of war, order of legal authority, act of God, or other unavoidable causes not attributed to the fault or negligence of the vendor. The burden of proof for need of such relief rests with the vendor. The CSB reserves the right to cancel all contracts with any vendor who fails to perform for any one contract.

5.14 Purchase Order or Contract Changes

A purchase order change or contract change is used to correct errors, to add or delete small quantities of goods, or to make other minor adjustments in the original contract. They may also be used to cancel orders. Vendors who deviate from the requirements of a purchase order or contract prior to the receipt of any authorized change order do so at their own risk.

5.15 Claims

Contractual claims whether for money or other relief shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

A contractor may not institute legal action prior to receipt of the Community Services Board's decision on the claim unless the CSB fails to render such decision within thirty days. The decision of the CSB shall be final and conclusive unless the contractor, within six months of the

date of the final decision on the claim, institutes legal action as provided in Section 2.2-4364 of the *Code of Virginia*.

5.16 Billings and Invoices

Invoices should reference the purchase order or contract number and be in accordance with the terms of such. Prompt payment discounts will be taken if offered and payment is made within the prescribed time frame. Time will be computed from the date of delivery or performance or from the date a valid invoice is received, whichever is later. The CSB may initiate partial payments when portions of the goods have been received in good condition and have been properly invoiced by the contractor and partial payment is authorized by the governing contract.

5.17 Prompt Payment of Bills

The CSB will promptly pay for completed delivered goods or services by the required payment date. The required payment date shall be either: (i) the date on which payment is due under the terms of the contract for the provision of the goods or services; or (ii) if a date is not established by contract, not more than forty-five (45) days after goods or services are received or not more than forty-five (45) days after the invoice is rendered, whichever is later.

Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial executions or deliveries to the extent that the contract provides for separate payment for partial execution or delivery.

Within twenty (20) days after the receipt of the invoice or of the goods or services, the CSB shall notify the supplier of any defect or impropriety that would prevent payment by the payment date.

If the CSB fails to pay by the payment date, unless otherwise provided under the terms of the contract for the provision of goods or services, the CSB shall pay any finance charges assessed by the supplier that shall not exceed one percent (1%) per month.

These provisions do not apply to the late payment provisions in any public utility tariffs or public utility negotiated contracts.

(Section 2.2-4352 of the *Code of Virginia*)

CHAPTER 6

Protests and Appeals

6.1 Protests

Any bidder or offeror submitting a bid or proposal in response to a solicitation may protest the award or decision to award a contract by submitting such protest in writing to the Executive Director of the Community Services Board no later than ten calendar days after the public notice of the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award will be given by the CSB in the manner prescribed in the terms and conditions of the Invitation for Bids or the Request for Proposals.

Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten calendar days after posting or publication of the notice of such contract.

The rules governing the filing of a protest are as follows:

- The written protest must be received in the Executive Director's office not later than 5:00 p.m. on the tenth day. If the tenth day falls on a weekend or an official CSB holiday, the ten day period expires at 5:00 p.m. on the next regular work day.
- The protest shall include the specific basis for the protest and the relief sought.
- The Executive Director shall issue a decision in writing with ten days stating the reason for the action taken. The decision shall be final unless the bidder or offeror appeals within ten days of the written decision by invoking the APPEALS PROCEDURE (if available) or institutes legal action as provided in Section 2.2-4364 of the *Code of Virginia*.

- If the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror, or at such later time as provided in Section 2.2-4360 of the *Code of Virginia*.
- No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror.

6.2 Appeals Procedure

The rules regulating the reasons and procedure for appeals are contained in Chapter 43, Article 1 of the Virginia Public Procurement Act (Sections 2.2-4357 through 2.2-4366 of the *Code of Virginia*). A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided for in Section 2.2-4303 of the *Code of Virginia*, whose protest of an award or decision to award under Section 2.2-4360 of the *Code of Virginia* is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the *Constitution of Virginia*, applicable state law or regulation, or the terms and conditions of the Invitation for Bids or the Request for Proposals. (Section 2.2-4364.C of the *Code of Virginia*).

The CSB may establish an administrative appeals procedure. If such administrative appeals procedure is made available, the Executive Director of the CSB will appoint a disinterested person or panel which shall conform to the requirements of Section 2.2-4365 and hear appeals of the following actions of the CSB:

- Decision to award or an award.
- Refusal to allow withdrawal of bids.
- Disqualifications and determinations of non-responsibility.

- Decisions on disputes arising during the performance of a contract.

6.3 Exhaustion of Administrative Procedures

A bidder, offeror or contractor need not utilize the appeals procedure of the CSB if such procedure is available; however, if the he or she initiates this procedure, it must be exhausted prior to instituting legal action concerning the same procurement transaction unless the CSB agrees otherwise. (Section 2.2-4364.F of the *Code of Virginia*).

6.4 Effect of the Appeal on Procurement Proceedings

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith shall not be affected by the fact that a protest or appeal has been filed. (Section 2.2-4361 of the *Code of Virginia*).

An award need not be delayed for the period allowed a bidder or offeror to protest or appeal, but in the event of a timely protest as provided in Section 2.2-4360 of the *Code of Virginia*, or the filing of a timely legal action as provided for in Section 2.2-4364 of the *Code of Virginia*, no further action to award the contract will be taken unless there is a written determination by the CSB that award of the contract is necessary to protect the public interest or unless the bid or offer would expire. (Section 2.2-4362 of the *Code of Virginia*).

6.5 Time and Place of Hearings

If an administrative appeals process is available, the parties will be given at least ten days' notice of the time and place of the appeal hearing. Appeals may be heard earlier upon the consent of all parties.

Hearings will be held at a site selected by the CSB.

6.6 Hearing Procedures

If an administrative appeals process is available, hearings before an individual or panel appointed by the Executive Director of the CSB are subject to the following provisions:

- Hearings are not trials and will not be conducted as such.
- Hearings will be informal and each party will be given a reasonable period of time to state their position.
- Any party may be represented by legal counsel at the hearing.
- Rules of evidence do not apply, except that the individual or panel hearing the appeal may exclude evidence which is irrelevant or redundant and may limit testimony and argument as necessary to reasonably expedite the proceedings.
- Witnesses may be called to testify; but the individual or panel hearing the appeal does not have subpoena power and an oath will not be administered.
- The individual or panel hearing the appeal may:
 - Ask questions at any time but may not question any of the parties in closed session.
 - Limit the number of witnesses.
 - Control the discussion to the extent that he/she/they, in their opinion, feel will contribute to the identification and resolution of the issues.
- Hearings will be open to the public; however, the individual or panel hearing the appeal will adjourn the hearing to deliberate and reach a decision in private.

The manner of proceedings will be determined by the individual or panel hearing the appeal. Normally, the hearing will be conducted as follows:

- The appealing party will state its reasons for appealing and the desired relief. Points of contention between the vendor and the CSB will be limited to those points raised to the CSB by the vendor in its letter of protest.
- The appealing party will present its witnesses and evidence. The individual or panel hearing the appeal will be able to ask questions of each witness.

- Other parties may present their responses, the relief they desire, if any, and their witnesses and other evidence in the order determined by the individual or panel hearing the appeal. Questions may be asked of their witnesses by the individual or panel hearing the appeal or by other parties to the appeal.
- The CSB will provide for the taking of notes or electronic recording of the appeal hearing. The following rules apply to these recordings:
 - These records will be retained for sixty days. If judicial review of the Board's decision is instituted, the recording will be retained until the judicial review has been completed.
 - Any party may provide a court reporter at its own expense. If a court reporter is used, transcripts of the hearing shall be given to the individual or panel hearing the appeal at no expense, upon its request, and will be made part of the appeal hearing's records. If the individual or panel hearing the appeal determines the transcript to be inaccurate or incomplete, he/she/they shall note for the record any inaccuracies or incomplete transcription of the hearing.

6.7 Appeal Decision

The individual or panel hearing the appeal will issue a written decision within seven days of the hearing date except when it is necessary to await a transcript of the hearing, in which case a written decision will be issued within seven days of receiving the transcript. This decision will include a brief statement of the relevant facts on which the decision was made. This will be called the "Findings of Fact". The individual or panel hearing the appeal will then state its decision, providing such detail as considered necessary. The decision will be signed by that individual or, if a panel, by the chairperson of the panel.

Copies of the decision will be mailed to all parties and will be available to other interested persons upon request.

6.8 Judicial Review

Any party to an appeal hearing will be entitled to institute judicial review if such action is brought within thirty days after receipt of the written appeal decision or within thirty days of attempted postal delivery of the written appeal decision to the last mailing address provided by the party to the individual or panel hearing the appeal.

The findings of fact by the individual or person hearing the appeal will be final and conclusive and will not be set aside by a Court unless fraudulent, arbitrary, or capricious, or so grossly erroneous as to imply bad faith. No determination on an issue of law will be final if appropriate legal action is instituted in a timely manner (Section 2.2-4365 of the *Code of Virginia*).

CHAPTER 7

Disposal of Surplus Property

7.1 Policy

Property no longer needed by the Community Services Board will be reported to the **Fiscal Officer (or other position)** as surplus property. Surplus property is generally defined as that which has been designated as excess, obsolete or used beyond economic

repair. It will be disposed of in accordance with one of the disposal methods noted in Section 7.2.

7.2 Disposal Methods

The methods authorized for disposal of surplus property include:

- Trade-in - Surplus property may be traded in on the purchase of other similar type of equipment; i.e., surplus office equipment traded in for new office equipment or a van traded in on a new vehicle. The items to be traded in will be fully described in an Invitation for Bids for new equipment and the low bidder will be determined by subtracting the price offered on the trade in from the price quoted on the new item.
- Sale to Another Public Agency - Surplus property may be sold to another public agency (CSB, county, etc.) at a fair market value.
- Public Auction - Surplus property may be sold to the general public at public auction on an "as is, where is" basis to the highest bidder(s). Auction notices will be placed in area newspapers.
- Sealed Bid - Surplus property may be listed in an Invitation for Bids. This procedure is handled similar to the purchase of goods except the items are sold to the highest bidder(s) on an "as is, where is" basis.
- Negotiated Sale - If competitive methods (public auctions or sealed bid) have been attempted with no success and no other public agency desires the property, it may be sold at a negotiated price.
- Set Price - If other methods are not practicable, surplus property may be priced at a fair market value and offered for sale to the public on a first come, first served basis. Notice of these sales will be placed in area newspapers.
- Donations - Occasionally, the Board may approve the donation of CSB property to a not for profit organization.

Also, property that is deemed to have rare or historical value may be donated to an appropriate organization.

- Destruction of Abandonment - Property which is unusable, beyond economic repair and determined to have no commercial value, or the cost of sale would exceed the expected returns, may be destroyed or abandoned.

VENDORS' GUIDE TO CSB PROCUREMENT REGULATIONS

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